

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3726 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

TV VACHHANI & OTHERS

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MR JR NANAVATI for the Petitioners

MR MUKESH PATEL for the Respondent

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 04/09/96

ORAL JUDGEMENT

1. The petitioners are the members of the Trishulam Cooperative Housing Society Limited, Sardarnagar, Sindhi Colony, Ahmedabad. It is a registered cooperative Housing Society, and all the petitioners are residing in Sardarnagar Township, Ahmedabad. The petitioners originally belonged to Sindh, now forms a part of Pakistan. The petitioners alongwith their family migrated to India and finally settled at Sardarnagar,

Ahmedabad. The petitioners are displaced persons within the meaning of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. The respondent no.1 has established a special and separate administration for displaced persons and has established Sardarnagar Township for the purpose of rehabilitating the displaced persons who have migrated from Pakistan. The object of establishing Sardarnagar Township is to rehabilitate and establish those persons who have migrated from Pakistan and who are displaced persons in this country. Various schemes were introduced for that purpose and one of the schemes is to allot the land for the purpose of building houses for the displaced persons. The petitioners claim themselves to be eligible for the benefits of the said scheme as they are displaced persons and have settled at Sardarnagar Township, Ahmedabad. The petitioner no.3 herein, on 25-5-1981 made an application to the respondent no.3 herein praying therein to grant plot of land for the purpose of construction of houses by the Cooperative Housing Society. It has been mentioned in the application that the petitioner no.3 alongwith 13 other displaced persons have formed a Cooperative Housing Society and they are eligible for grant of suitable land for construction of the houses under the Cooperative Housing Scheme under which the Government has reserved 126 acres of land in the Sardarnagar Township of Ahmedabad. The prayer has been made in the said application for grant of 4500 to 5000 sq. yards of the land to the society for the purpose of construction of the residential houses by its members. Necessary particulars have been given by the petitioners by filing the affidavit and other documents including the particular regarding the income of each member of the society with their residential addresses. Meanwhile it appears that one more member was also added after filing the aforesaid application to the respondent no.3, and therefore prayer for grant of land for 15 members was made.

2. After making the necessary inquiry, the respondents no.2 and 3 granted the Land Availability Certificate in favour of the members of the Society under the certificate dated 19th October, 1981. The certificate certifies that the members of the society be made available 3000 sq. yds. of the land bearing City Survey No.1886/Paiki for 15 members for the construction of their residential houses. It was further stipulated in the certificate that the land allotted to the proposed society will be kept by its members in accordance with the rules made by the Government from time to time and the society will have to make an application within a

period of six months for registration from the date of the certificate and that the entire sale price was required to be paid by one instalment, failing which the certificate shall stand cancelled.

3. The petitioner society deposited Rs.4080/- in Ahmedabad District Cooperative Bank Limited in the current account of the proposed society. Thereafter the society made an application for registration to the Registrar, Cooperative Societies, Ahmedabad on 18-12-1981. The Society was registered as Housing Cooperative Society under the provisions of the Gujarat Cooperative Societies Act, 1961 and the provisional registration certificate bearing No.139/A/518/1982 has been granted. After the grant of the aforesaid certificate by the competent authority, the petitioners made an application to the respondent no.3 on 11th February, 1982 informing thereunder that the Society has been registered and the prayer has been made to accept the payment of the sale price of the land admeasuring 3000 sq. yds.. It has also been mentioned in the application that the Society is in need of 4200 sq. yds. of land, and as such, prayed for the additional requirement of 1200 sq. yds. of the land.

4. On 11th March, 1982 the Chief Promotor wrote a letter to the respondent no.3 requesting him to accept the payment of the sale price of the land and to take proper steps for passing the allotment orders in respect of the land which is earmarked for the Society. The petitioner prayed for taking expeditious decision in the matter otherwise antisocial elements would have a chance to make encroachment upon the land by illegal means and methods which will in the eventuality of the allotment of the land to the petitioner society, will cause them great hardship and difficulty. This letter was followed by another letter of the Promotor of the Society dated 15th March, 1982 and an identical request has been made therein.

5. Under the letter dated 22nd March, 1982, the petitioners have pointed out to the respondent no.2 that unauthorised encroachment at Ramesh colony was increasing day by day and kachchha huts built by antisocial elements had reached the corner of Samratnagar fencing which is only 200 yds. away from the land which is allotted to the proposed society, and therefore, requested for the expeditious decision for final allotment of the land to the members of the Society. Again on 29th March, 1982 same request has been repeated by the petitioner Society. The prayer has been made by the petitioner Society to the

Registrar, Cooperative Societies for extension of the period of provisional registration as final order of allotment of the land has not been issued by the competent authority.

6. The respondent no.3 under its letter dated 27th April, 1982 directed the Chief Promotor of the petitioner Society that the Society should pay to the office the sale price at the rate of Rs.20/- per sq. yd. totalling Rs.50763-10 for 3000 sq. yds. of land within 15 days from the date of receipt failing which it should be treated that the land is not need by the Society and that the request for allotment shall stand cancelled and the application for allotment shall be filed. In pursuance of the aforesaid letter of the respondent no.3, the Society paid Rs.50763-10 in the office of the respondent no.3 by cheque no.067981 drawn upon the Indian Overseas Bank dated 29th April, 1982. The respondent no.3 has drawn the aforesaid amount from the Bank and the receipt bearing No.819242 dated 14th May, 1982 has been given to the Society after receipt of the amount i.e. the sale price of the land. The respondents no.2 and 3 were bound to pass the final allotment in favour of the Society in respect of 3000 sq. yds. of the land, but they have not made the order immediately. On 15th May, 1982 one of the office bearers of the Society wrote a letter to the respondent no.1 requesting them to issue instructions to respondents no.2 and 3 to issue final allotment order. The respondent no.1 by letter dated 25th May, 1982 advised to the petitioners to approach to the respondent no.2 in the matter. Under the said advise, the petitioners have approached to the respondent no.2 vide their letter dated 28th May, 1982, but the respondent no.2 did not pay any heed to the request made by the office bearers of the Society. The petitioners having the apprehension that the antisocial elements might make the encroachment upon the land in question and the price of which has been paid by the petitioners and the same has been accepted by the respondents no.2 and 3, taken the care and around it barbed wires have been put. The respondent no.3 has taken it to be a case of unauthorised encroachment by the petitioners and they were directed to remove the barbed wire fencing. A notice has been given in this respect dated 21-7-1982. The necessary explanation has been furnished by the petitioner Society in the letter dated 18-8-1982. Then the correspondence between the petitioner Society on one side and respondents no.2 and 3 on the other, in the matter had taken place, details of which has been given by the petitioners in this Special Civil Application. Despite of the repeated requests, nothing has been done in the

matter, the petitioners have approached this Court by filing the Special Civil Application and the prayer has been made to issue a writ of mandamus and/or a writ, order or direction in the nature of mandamus directing the respondents no.2 and 3 to issue final allotment order in respect of the land admeasuring 3000 sq. yds. out of 126 acres of land situated in Sardarnagar township, Sardarnagar, Ahmedabad. The further prayer has been made for quashing and setting aside of the notices dated 31st July, 1982 and 22nd March, 1983 regarding the removal of fencing from the land.

7. The respondent, the Administrator, Sardarnagar Township, Sardarnagar, Ahmedabad has filed the affidavit in reply to the Special Civil Application. In the reply, the respondents have come up with a case that vide resolution 24th December, 1981 a Committee was constituted by the State of Gujarat for the purpose of regularising the encroachment and to make allotment/sale of open plots in Sardarnagar Township. The said Committee after deliberating upon and considering various aspects of the matter, framed regulations inter-alia, providing the price of land for the purpose of allotment/sale to the displaced persons fixing the rate at Rs.20/- per sq. mt.. It was further provided that in order to be eligible, income of the displaced person should not exceed Rs.10,000/- per annum. The said rules were approved in the meeting of the Committee held on 22nd March, 1982. The Administrator in view of the regulations framed by the Committee in its meeting held on 22nd March, 1982, under its letter dated 27th April, 1982 directed the Society to pay Rs.50763-10 calculated at the rate of Rs.20/- per sq. mt. within a period of 15 days. It is admitted that the Society has paid the amount. The respondents have further come up with a case that the Government in the Revenue Department however by its resolution dated 23rd April, 1982 framed regulations for the purpose of sale of open plots and regularising the encroachment made. Under the said resolution, the Government has fixed the eligibility ceiling limit of income at Rs.7200/- instead of Rs.10,000/- fixed by the Committee earlier. The application of the Society was placed before the Committee for considering the sale of plot of land in question and the said Committee by its resolution dated 2nd April, 1982 rejected the application on the ground that the income of all the members except one of the Society exceeds Rs.7200/- and therefore, the Society is not eligible to purchase the land under the scheme of the Government. The Society was accordingly informed by the letter dated 13th April, 1983.

8. So from the reply which has been filed by the respondent Administrator, it is clear that two different eligibility criterias have been prescribed i.e. one by the Committee to which the powers has been delegated by the State Government and another by the State Government. Presently I am not on this point that which of the criteria should prevail.

9. The petitioner filed the rejoinder to the reply filed by the respondent and therein it has been denied that the Society has received the letter dated 13th April, 1983. The petitioners in the rejoinder have come up with a case that the respondent have allotted the land to Jai Jhulelal Cooperative Housing Society, Kubernagar, though the income of its members, who were the employees of the Post & Telegraph Department, exceeded Rs.10,000/-, without making any inquiry and without asking any material affidavit. A reference has been made that there are other Societies to whom the land has been allotted by the respondents even though the income of the individual members exceeds Rs.10,000/- and the names of those Societies have been given as Sindhu Sagar, Sindhu Dhara and Haridarshan. The petitioner has further stated that individuals have also been given the plots of the land admeasuring 400 sq. yds. It has further been stated that the respondent no.3 decided to allot the land to one Shri B.C. Chatlani and the allotment order has been questioned by the Government on the ground that the same was not in accordance with the rules framed by the State Government. Shri Chatlani made a representation to the Government and the reply was given to him on 3rd September, 1982 in which it has been mentioned that the yearly income criteria prescribed by the rules framed by the Government regarding grant of land in Sardarnagar township is under review. The petitioners have stated that the respondents have not yet finalised their policy regarding the allotment of the land to the displaced persons and the rules relied upon by the respondent no.3 in the affidavit are still under review by the State Government. A reference has been given by the petitioners to the case of allotment of the land to the members of Dayal Baug Cooperative Society under the order dated 9th December, 1982 of the respondents. The petitioners have made a grievance that the income of the members of the said society was exceeding Rs.10,000/- per annum, but without verifying the income or other eligibilities of the individual members of the society, the land has been allotted. A further affidavit has been filed by one of the petitioners on 14th August, 1996. In this affidavit, the petitioner has given out that the Committee in its meeting held on 5th August, 1982

considered the case of Saraswati Cooperative Housing Society and Sant Kanwarram Sindhi Shikshak Cooperative Housing Society and resolved to make allotment of the land to them. The petitioner has further stated that the case of Sant Kanwarram Sindhi Shikshak Cooperative Housing Society was identical and having the same facts as that of the case of the petitioners and if Sant Kanwarram Sindhi Shikshak Cooperative Society is granted the land then the respondents were bound in law to grant the land to the petitioners. A reference has been made that the Committee in its meeting held on 28th January, 1993 has passed the resolution whereby the Committee has reconsidered the demand of the petitioners and resolved that the petitioner Society has also paid the amount when asked for, and therefore, in their case, the land should be allotted on the same basis as was done in the case of Sant Kanwarram Sindhi Shikshan Cooperative Housing Society. The respondent no.3 vide letter dated 25th February, 1993 informed the Promotor of the petitioner society about the resolution dated 28th January, 1993. The Society under its letter dated 5th November, 1993 requested the respondent no.3 to allot the land as per the above referred resolution. The petitioner has made a grievance that the Section Officer, Revenue Department, Government of Gujarat under its letter dated 1st June, 1993 informed the Promotor of the petitioner Society that the Collector, Ahmedabad has been instructed to allot the land to the petitioner Society on the same basis as the allotment made to Sant Kanwarram Sindhi Shikshan Cooperative Housing Society and the petitioners should contact the office of the Collector. The Administrator under its letter dated 4th November, 1993 informed the petitioners that if they are prepared to pay the market price then the allotment of the land can be sanctioned in their favour and that the petitioners were asked to inform as to whether they were prepared to purchase the land at the market rate and the petitioners were asked to inform about the same by return of post.

10. The petitioner has filed further affidavit on 3rd September, 1996 in which it has been stated that the representation dated 30th September, 1993 made by the petitioners to the Secretary to the Government, Revenue Department, Sachivalaya, Gandhinagar has been rejected. From the further affidavit which has been filed by the petitioner, it comes out that in cases of the other Society, the land has been allotted though the yearly income of the members thereof exceeds Rs.10,000/-.

11. The petitioners have not produced any satisfactory evidence on the record in support of their

contention that in case of other Society, the land has been allotted though the income of its members exceeds Rs.10,000/-. In the affidavit, the petitioner has stated on the contrary that without ascertaining the correctness of the fact of the income of the members of the Societies, those Societies have been made the allotment of the land. This averment is explicit and leaves no doubt that the petitioners are making the grievance that the inquiry was not properly made for ascertaining the correct income of the members of those Societies. In the absence of that material, it is difficult to accept the contention of the petitioners that in case of other Societies, the allotment has been made though the income of the members at the relevant time exceeded Rs.7200/per annum. The burden was on the petitioners to make out a case of discrimination. Otherwise also when the Government has laid down the eligibility then the Administrator could not have acted contrary to the eligibility criteria laid down by the Government.

12. The petitioners have made a reference to the case of some of the individual members, but those are not relevant in the present case. Now I may revert to the affidavit filed by the petitioner on 14th August, 1996. In this affidavit, a reference has been made to the allotment of the land to the two Societies, Saraswati Cooperative Housing Society and Sant Kanwarram Sindhi Shikshak Cooperative Housing Society by the Sardarnagar Township Committee at its meeting held on 5th August, 1992. The petitioner has given out that the facts of the case of those societies are identical to the facts of the case of the petitioner. The averment made by the petitioner in this affidavit has not been controverted by the respondent. A further reference has been made in this affidavit that the Committee has decided to reconsider the case of the petitioner under its resolution dated 28th January, 1993, but in their case, the demand has been made that prevailing market rate of the land as prescribed by the Government be paid and the reference in this respect has been made to the letter of the Section Officer dated 1st June, 1993.

13. This court on 22nd September, 1983 passed the order directing the petitioners to make a representation to the Secretary to the Government in the Revenue Department in regard to the subject matter of this petition and more particularly, in respect of a reasonable income limit being fixed in view of the prevalent circumstances including the real value of money. Such representation was directed to be made within a period of ten days from the date of the order

and the same shall be entertained. The decision thereon was directed to be taken within a period of 14 days from the date of representation.

14. From the affidavit which has been filed by the petitioner dated 3rd September, 1996, it transpires that the petitioners made a representation on 30th September, 1983 and the same has been rejected by the Government. The petitioners have not produced all the relevant documents before this court. The representation has been rejected, but a copy of the same has not been produced on the record. Secondly, in the affidavit the date of the representation has been said to be 30th September, 1993, but the copy of the representation which has been filed, the date thereon is 30th September, 1983. It appears that the petitioner have further made some representation for review of the order which the State has declined to review. It also appears that the representation of the petitioner has been rejected under the letter dated 12th January, 1984. This order has not been produced. This conduct of the petitioners is not fair.

15. From the facts which have come on the record the petitioners have made a grievance that their case was not treated at par with the identical situated societies i.e. the Saraswati Cooperative Housing Society and Sant Kanwarram Sindhi Sikshak Cooperative Housing Society. The second grievance has been made that though the Committee has decided to reconsider the case of the petitioners, the Section Officer has written letter that they have to make the payment of the price of the land as per the prevalent market rate. Yet another question arises whether the eligibility laid down by the Committee or eligibility laid down by the Government should be prevailed. The Committee prescribed the eligibility which criteria, the petitioners were fulfilling and the Committee has issued a Land Availability Certificate also and directed the petitioners to pay the costs of the land which amount has admittedly been paid in the year 1982. Lastly, the question arises whether the letter dated 1-6-1993 was written by the Section Officer on his own or it is a letter on the basis of the decision taken by the Secretary.

16. The respondents have also not produced the decision which has been given by the Secretary to the Government in Revenue Department on the representation which has been submitted by the petitioners in response to the order of this Court. What were the reasons which prevailed the Government not to consider the eligibility criteria in the context as suggested by the court is not

made known to this court. Over and above, there is another matter which needs consideration that the petitioner has to make the payment at the prevalent market rate of the land then the reference to which date should be taken, the date of filing of the writ petition or the date of rejection of the application for allotment or the date in the year 1993.

17. I am of the opinion that the best solution in the facts and circumstances of this case, as stated above, is to direct the Secretary in the Revenue Department of the Government of Gujarat to decide all these matters afresh. It is further directed that one of the representative of the petitioner may be given an opportunity of personal hearing also. To avoid any further complications, the petitioners are directed to submit a copy of the writ petition together with the enclosures, a copy of the reply filed by the respondent, a copy of the rejoinder together with the enclosures, the further two affidavits together with the enclosures to the Secretary within a period of two months from the date of receipt of certified copy of this order. The Secretary to the Government, Revenue Department shall decide this matter within a period of three months from the date of receipt of the representation. However, it is made clear that in case, the Secretary, Revenue Department, Government of Gujarat decides in favour of the petitioners then it may further go on the question that in case any of the petitioners during this interval has acquired his own house in his name or in the name of his spouse or in the name of his son or daughter (unmarried) then he shall not be entitled for the allotment of the land. In case, the allotment is made on the condition of payment of costs of the land at the prevalent market rate on the specified date as decided by the Secretary, the petitioners shall be entitled for the interest from the Government on the costs paid by them in the month of April, 1982. The Secretary, while making the order of allotment where the claim of the petitioners is accepted, should further ensure that the reasonable conditions have been imposed on the transfer of the land allotted. He should ensure that the petitioners may not use these allotment for their gains by sale of the land to other persons. All precautions should be taken so that the petitioners themselves use this land, in case it is allotted and not to use it for any profit gains. While deciding the representation, the Secretary will also take into consideration, the observations made by this court under its order dated 27th September, 1983. The petitioners are further directed to send a copy of this order alongwith the aforesaid documents to the Secretary. Rule

is made absolute in the aforesaid terms with no order as
to costs.

zgs/-